(1984) 11 DEL CK 0012

In the Delhi High Court

Case No : C.W.P. No. 2090 of 1981

S.D. Sharma APPELLANT

Vs

Trade Fair Authority of India and others RESPONDENT

Date of Decision : 19-11-1984

Acts Referred:

Citation : (1986) ILR Delhi 430

Hon'ble Judges : S.B. Wad, J;Rajinder Sachar, J

Bench : Division Bench

Judgement

Sachar, J.—This writ petition was heard together with others and they will be disposed of by these common judgment as the counsel agreed that the decision in this writ petition will govern the decision in other petitions.

2. This writ petition challenges the order of removal of 7th April, 1981 as upheld in appeal by the order the Managing Director of respondent No. 1 Trade Fair Authority as per his order dated 15th July, 1981 by which the petitioner has been removed from service. The charge sheet was served on the petitioner on 17th February, 1981 proposing to hold an enquiry against him under Rule 27 of the Trade Fair Authority of India Employees'' (Conduct, Discipline and Appeal) Rules, 1977 (hereinafter to be known as "Conduct Rules"). The charge reads as under :

"That a demonstration was held on 3rd February, 1981 by some of the Employees of the Trade Fair Authority of India in office premises in which inflammatory speeches were made and defamatory slogans were shouted. Chairman and some other Officers of the TFAI were criticised. Shri S. D. Sharma was one of the speakers. A news item appeared to this effect in Patriot dated the 4th February, 1981. Shri S. D. Sharma''s action comes under the definition of ''misconduct'' as defined in the Trade Fair Authority of India Employees'' (Conduct, Discipline and Appeal) Rules. This relates to Rule 5(6) regarding willful insubordination and Rule 5(21) regarding meetings, demonstrations, slogans shouting etc. within the premises of the Authority without the permission of the competent Authority i.e. Chairman and Rule 5(20).

Commission of any act subversive of discipline or of good behavior.

Shri S. D. Sharma has, Therefore, violated Rules 5(6), 5(20) and 5(21) of TFAI Employees'' (Conduct, Discipline & Appeal Rules)."

Thereafter an enquiry was held and the order of removal was passed by the General Manager vide his order of 7th April, 1981 and his appeal failed. The petitioner being aggrieved has come to this Court.

3. In the forefront the first objection raised by Mr. Punjwani, the learned counsel for the respondent is that no writ petition lies because according to him Trade Fair Authority is not a State within the meaning of Art. 12 of the Constitution. We cannot agree. It was in pursuance of a decision of the Government of India that ''Trade Fair Authority'' has been registered as a company under S. 25 of the Companies Act, 1956 on 30th December, 1976, and started functioning from 1st March, 1977. The company was established by amalgamating the functions of two government organisations, namely India International Trade Fair Organisations and Directorate of Exhibitions and Commercial Publicity of the Ministry of Commerce and the Indian Council of Trade Fairs and Exhibitions, Bombay. This was done with a view to unify policy directions, control and implementation in the field of publicity and was to replace and take over the functions and activities of the above said three organisations. Pragati Maidan Complex at New Delhi which is owned by the Central Government with all its assets and fittings, equipment, furniture etc. were leased out to the respondent Trade Fair Authority at a nominal rent of Re. 1/- per annum. The company was formed with four shareholders i.e. 1. The President of India, 2. Mohd. Yunus, 3. C. Venkataraman, Joint Secretary, Ministry of Commerce, and 4. B. Ramadorai, Chief Executive Director, Fair Organisation, Ministry of Commerce, New Delhi. The share capital of the company is Rs. 50 lakhs divided into 50,000 equity shares of Rs. 100/- each the President through the Secretary (Foreign Trade), Ministry of Commerce, New Delhi holds 24997 shares and the other three directors hold one share each. The objects for which the Company was established include the publicity in India and abroad, International Trade Fairs and Exhibitions to be held in India an invite the foreign participants to participate in them. Among other objects the memorandum provides that respondent authority will undertake at the instance of the Union Government any trade or other activity connected with the above objectives. Clause (4) provides that except with the precious approval of the Central Government no remuneration or other benefit in money or moneys worth shall be given by the company to any of the members whether officers or officials of the company, and except with the previous approval of the Central Government no member shall be appointed to any office under the company which is remunerated by salary, fees or in any other manner not excepted by sub-clause (3).

4. Art. 59(2) of the Trade Fair Authority provides that chairman of the board of directors shall be appointed by the President and other directors (including the Managing Director) shall be appointed by him in consultation with the Chairman.

Clause (3) of Art. 59 empowers the President to remove any director including the Chairman and Managing Director from office at any time in his absolute discretion.

5. The petitioner himself was a permanent employee of the Ministry of Commerce. The petitioner''s service were transferred to respondent Authority on 1st July, 1977. The memorandum dealing with the subject of Trade Fair Authority officials previously working in the Directorate of Exhibitions and Commercial publicity specifically protected the existing terms and conditions of the service in the erstwhile directorate of Exhibitions and Commercial Publicity. Even the seniority of various persons who were working in the Directorate was to be maintained as at before they joined the respondent Authority.

6. It is well established the whether corporation is created by a statute or it may be Government company or a company formed under the Companies Act, it would be an authority within Art. 12 if it is ''an instrumentality or agency of the government'' (See Ajay Hasia v. Khalid Mujib 1981 1 L.L.J. 103.

7. The test Therefore is to see whether the Corporation is an instrumentality or agency of the Government. Some of the relevant tests have been summarised in the above decision in para 9. The first test is ''One thing is clear that if the entire share capital or of the Corporation is held by the Government it would go a long way towards indicating that the Corporation is an instrumentality or agency of Government.'' This test is completely satisfied in the present case. The whole share capital is furnished by Union of India. Subscribers to the Memorandum of the company are Government officers. The financial assistance given to the respondent in the nature of Pragati Maiden complex would itself show how pervasive is the interest of the Government and control as to make an argument that it is not a ''State'' is almost a non-starter.

8. It is impermissible to assert that Trade Fair Authority is not an instrumentality of the Government then the very functioning depends on the use of Pragati Maidan complex without which Trade Fair Authority could never even move. As a matter of fact unless it is held that the Trade Fair Authority was a State, the handing over of the Pragati Maidan complex at a token rent if Re. 1/- per annum, by the Central Government, would without difficulty have to be held as arbitrary because in that case the lease would be to a private company and straightway would suffer the infirmity of being discriminatory. The only manner the present arrangement can be justified is by the holding of Trade Fair Authority being agency of Government. Mr Punjwani''s argument that respondent authority is not the only body to hold fair and there are some other corporation which can also hold fairs and Therefore the respondent Authority cannot be said to enjoy the sole monopoly of holding fairs does not appeal to us. We cannot agree that unless the Authority enjoy exclusive monopoly status it cannot be an instrumentality of the State. Now Hindustan Steel Ltd., a public sector company is not the only company engaged in the production of steel. Even there is a private sector company which is producing steel. Even then Wad, J. held it to be

a ''State'' though no doubt Prakash Narain, J. (as he then was) held differently in A. M. Aggarwal v. Union of India (1981) 2 S.L.R. 407. But since then in view of Ajay Hasia''s case (supra) it will be presumptuous not to hold that Hindustan Steel Ltd. is a State and we do hold accordingly.

9. What has to be seen is whether there is so much over all control of the Government that it cannot be anything but an agency of the Government. The all pervading power of the President to appoint Chairman and directors and to remove them at his sole discretion can hardly leave a minutes doubt that Trade Fair Authority is nothing but an instrumentality of the Government. Such overall control by the President is totally incongruous in a private company. The deep and pervasive State Control may afford an indication that the corporation is a State agency or instrumentality (Test No. 4 Ajay Hasia''s case (supra)). It has Therefore to be held that Trade Fair Authority is a State within Art. 12 and amenable to the writ jurisdiction of the court under Art. 226 of the] Constitution.

10. With regard to the order of removal, various objections have been raised by the counsel for the petitioner, Mr. Chopra. The substance of these is that there has been a denial of natural justice and absence of reasonable opportunity and non-compliance with the Conduct Rules. It is also contended that the decision of the respondent Authority is based on no evidence and hence it is vitiated.

11. Serious contentions were raised by Mr. Chopra to the manner of holding enquiry i.e. the denial to supply documents absence of opportunity for cross-examination, which denied the principles of natural justice, as supporting his contention to challenge the findings against the petitioner.

12. Mr. Punjwani apart from joining issues on factual matters put forth the bold, and if we may say so, extreme contention that the conduct rule being not statutory, no complaint can be raised even if they are breached. Mr. Punjwaui however ignores that the procedure for holding enquiry for alleged misconduct against employees is only a formalisation of the procedure to satisfy the requirements of natural justice. Whether the rules are statutory or not does not take away the compulsion to observe the principles of natural justice when any action is contemplated, and which are in terms of the requirements of Rules (Statutory or not) to be taken for good and sufficient reason. One would normally consider it a hearsay to contend that if there are no statutory rules a public employer cannot invoke the principle of natural justice. But such is the contention of Mr. Punjwani. He seeks to support his plea by the observation of Prakash Narain, J. in A. M. Aggarwal v. Union of India and others (supra) made in para 27 to the effect that'' no question arises of violation of Art. 14 or any other Constitutional provisions if the State terminates a contract of service or any other contract contrary to its conditions question of natural justice does not arise ... in employer and employee relations not regulated by a statute or statutory rules question of complying with the rules of natural justice does not arise. This finding was given in the course of coming to a conclusion that Steel Authority of India Limited was not a State within Art. 12 of the Constitution. In

coming to this conclusion the learned Judge relied on a Full Bench decision of this court reported as Dr. Y. P. Gupta v. Union of India and other AIR 1975 Del 453, which had held that Indian Council of Agricultural Research cannot be regarded as an Authority in the matter of appointment of its staff for the purpose of Art. 226 of the Constitution. He also relied on Ved Prakash Malhotra v. State Bank of India 1974 (1) Del 660. We may notice that this view of SAIL not being an authority within Art. 226 was however not accepted by the other learned Judge (Wad, J.) Constituting the Bench; who held that SAIL is an agency or an instrumentality and hence an authority within Art. 226 of the Constitution. Why the learned Judges argued in dismissing the writ petition was because they found that the breach complained was of contract and he was seeking to enforce the contractual obligations. That case has no relevance to the present case. We may also note that in the subsequent decision reported as A. R. Joshi v. The State Bank of India 1980 (1) Del 133, Prakash Narain, J. himself accepted that an employment in the State Bank of India was statutory employment and that the employee was entitled to invoke the principles of natural justice. The learned Judge noted that the employee was not given documents at the appropriate stage; he was not allowed to cross-examine the witness and observed that the statutory authority cannot be allowed to act in that manner, Ved Prakash Malhotra''s case was distinguished in view of the pronouncement of the Supreme Court in Sukhdev Singh and others v. Bhagat Ram and others. 1975 1L.L.J. 399. It may also be noticed that Dr. Y. P. Gupta''s case (supra) on which reliance was placed in Aggarwal''s case (supra) was overruled by the Supreme Court in Dr Y.P. Gupta Vs. Union of India (UOI) and Others, . In view of the latter law and the authoritative pronouncement of the Supreme Court it is not possible to rely on these observations that principle of natural justice will not apply in the case of public employment. These observations by Mr. Punjwani if we may say, though raised were too broadly stated and cannot be of any avail to him. This argument or Mr. Punjwani thud overlooks that service rules only provide some mechanism as principles of natural justice would require, if there were no statutory rules because it is by now well settled that is any adverse decision is taken and there is denial of cross-examination of witnesses, it would be arbitrary and thus vocative of Art. 14 of the Constitution, and if it affects any public employment it is also vocative of Art. 16, which strikes at arbitrariness (See E. P. Royappa v. State of Tamil Nadu and others [1974 1 L.L.J. 172).

13. In our opinion once the conduct rules have been framed by the respondent authority it is not permissible for it to urge that it is not bound to comply with the same on the fallacious reasoning that they are not statutory. No authority can be allowed to opt out of rules framed by it for the benefit of employees unilaterally. An administrative authority which purports to act by its regulations must be held bound by the regulations (See A. L. Kalra v. P. & E. Corporation of India Ltd. 1984 2 L.L.J. 186), if there are no conduct rules, any disciplinary action will have to comply with the principles of natural justice. Thus even if at the time of dismissal, the statutory regulations had not been framed or had not

come into force, then also the employment of the respondent was public employment and the statutory body, the employer could not terminate the service of its employees without due enquiry in accordance with the statutory Regulation, if any in force, or in the absence of such Regulations, in accordance with the rules of natural justice. Can it be disputed that rules of natural justice in the circumstances of the case, required that the respondent should be given a reasonable opportunity to deny his guilt, to defend him self and to establish his innocence which means and includes an opportunity to cross-examine the witnesses relied upon by the appellant corporation; (See Managing Director, U.P. Warehousing Corporation and another v. Vinay Narayan Vajpayee 1980 2 L.L.J. 222)

14. Now let us examine the various infirmities point out by the petitioner as vitiation the removal. As mentioned above the charge against the petitioner is of violating the Rule 5(6), (20 and 21) which are as follows :

5(6). willful insubordination or disobedience, whether or not in combination with others, or any lawful and reasonable order of his superior.

(20) Commission of any act subversive of discipline or of good behavior.

(21) Holding meetings, demonstrations, slogans shouting etc. within the premises of the Authority without permission of the Chairman.

It was not pointed out nor was it seriously urged that there was any insubordination of any order issued by the superiors, under Ruler 5(6). The real gravamen of the charge appears to be that the petitioner along with others held meetings in the premises of the respondent/Authority in which they are said to have raised slogans and that the same were held without the permission of the Chairman, thus violating Rule 5(20) and (21). Now the defense is that the management had agreed in May, 1979, to grant certain benefit, which were not implemented and because of this non-implementation the petitioner and others held a protest meeting on 3rd February, 1981 which was completely peaceful. It was denied that any objectionable slogans were raised and the further defense was that since the very inception they have been holding meetings by issuing circulars and that similarly this meeting was held after issuing circular with the intention of drawing the attention of the Chairman to fulfill the agreement. The use of any objectionable language was denied. It is also the case of the petitioner that no objection was ever raised for issuing circular for holding the meeting and that they had been holding the meeting previously without any objection from the management. The meeting was held outside of the office. It is also denied that any slogans were raised against the Officers as it was maintained that they had cordial relations with the management. No unparliamentary language was said to have been used.

15. The first objection of denial of reasonable opportunity made by Mr. Chopra is said to the refusal by the management to give permission or to allow the petitioner to engage legal practitioner for his defense. Rule 27(6) provides that

the employee may take the assistance of another public servant to present his case, but may not engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority is a legal practitioner or unless the Disciplinary Authority having regard to the circumstances of the case so permits. It is not disputed that the presenting Officer was not a legally trained person. The charge was also a straight one of having held the demonstration and was not of such complex nature which should warrant an absolute necessity to engage legal practitioner. We Therefore cannot hold that refusal to allow the legal practitioner in any way prejudiced the petitioner.

16 The next objection is that the petitioner has asked for service of one of Shri Ashwani Kumar to defend him. This was also nor permitted. The reason is that Ashwani Kumar had retired from the service. Rule 27(6) permits an employee to take the assistance of another public servant. As Ashwani Kumar had retired he was no longer public servant and the petitioner could not insist upon his assistance being given. There is however force in the objection of the petitioner in C.W. 2092/81 and 2091/81 that they were not given the help of another Officer, M. L. Jain for whom they had sought permission. M. L. Jain was an employee of the respondent Authority and the denial of his assistance certainly can legitimately be a matter of complaint. It may also be noted that the petitioner had also asked in reply to the charge sheet that he may be supplied the documents and the list of witnesses which had been examined earlier. This was refused by the management because according to it, Explanation below Rule 27(3) it was not necessary at this stage to give the documents. Apparently the documents were given to the petitioner on 12th when he appeared before the Enquiry Officer.

17. From the record produced before us it would appear that the defense witnesses were examined earlier than the witnesses produced by the management. This seems to be a complete reversal of the manner of holding an enquiry because it would show as if the charges are accepted to be prima facie true even before examination of the management witnesses. The procedure reverses the whole criminal jurisprudence and it is assumed that the guilt is proved and that it is for the employee to prove his innocence which certainly denies any fair opportunity to the employee.

18. Another objection is that the witnesses for the management were not allowed to be cross-examined. Three witness were produced. Out of them the grievance with regard to two is correct but we do find that some questions were asked from the third witness, R. K. Sen Gupta. Denial of cross-examination of two witnesses is certainly open to criticism but need not detain us because the enquiry officer has not relied on these two witnesses to prove the charge against the petitioner because for the obvious reason that they do not implicate the petitioner. Though we must say that the procedure followed by the enquiry officer was in accordance with the fair principles of natural justice and would vitiate the impugned order, the infirmity of the impugned order of removal goes

much deeper, namely that the findings that the charges have been proved against the petitioner are based on no evidence or material and on this ground liable to be quashed.

19. Now there is no dispute that a meeting was held. Petitioner spoke and participated in the meeting, Mr. Chopra accepts all this and says that the petitioner had a fundamental right under Art. 19 to attend meeting and hold demonstration and if Conduct Rules are interpreted to make such participation per se actionable the said action would be plainly not only illegal but unconstitutional. We find force in this contention.

20. In Kameshwar Prasad v. State of Bihar and another 1962 1 L.L.J. 294 first part of Rule 4A to the effect that no Government servant shall participate in any demonstration or resort to any form of strike in connection with any matter pertaining to his conditions of service, was held to be vocative of Art. 19 of the Constitution as infringing the protection guaranteed by Art. 19(1)(a) & (6) of the Constitution. The court specifically held that right to make a demonstration in covered by Arts. 19(1)(a) and 19(1)(b) as it is in effect a form of speech or of expression. It was also recognised that demonstration may take various forms and that a peaceful and ordinary demonstration to draw attention to their grievance would fall within the freedoms guaranteed under these clauses. The court struck down the rule because the vice of the rule consists in this that it lay a ban on every type of demonstration be the same however innocent and however incapable of causing a breach of public tranquillity and does not confine itself to those forms of demonstrations which might lead to that result. The court also rejected the contention that person in service of Government are outside the protection of part III of the Constitution.

21. That departmental proceedings taken against an employee for participating actively in demonstrations organized in connection with strike were quashed as being vocative of the fundamental right guaranteed under Art. 19(1)(b) of the Constitution and the principle laid down in Kameshwar Prasad''s case (supra) were reiterated. (See : O.K. Ghosh and Another Vs. E.X. Joseph,). In that view even on the assumption that a meeting was held and demonstration made without the permission of the Chairman could not be found a valid charge. The mere fact that Clause 5(21) so provides, it is of no consequence because if it is so applied the prohibiting a peaceful demonstration which has been recognised as constitutionally protected Kameshwar''s case (supra). Clause 5(21) would have to be declared as invalid.

22. Mr. Punjwani, however seeks to distinguish Kameshwar''s case by arguing that the meeting was held on the premises of the respondent Authority and refers to Railway Board and another v. Niranjan Singh 1969 2 L.L.J. 743. In that case the Supreme Court up-held the circular issued by the Northern Railway which prohibited the holding of demonstration inside the railway premises or at a place of work. Rejecting the plea that the workers had a right to hold demonstration in the premises and circular as being vocative of Art. 19(1)(a) &

(b) the Supreme Court observed that there is no fundamental right for any one to hold meeting in Government premises but it however added an important rider that unless it is shown that either under law or the usage that the railway employees had been holding the demonstration inside the premises. That case is clearly distinguishable. In that case all that was laid down was that the railway workers could not insist on holding meeting in the railways premises inside the workshop. The court held that the premises were not open for being used by the general public. This case is clearly distinguishable. In the present case the petitioner had taken a specific stand that from the very inception they had been holding them meeting by issuing circular and that no one had objected to the issue of the circular or of holding of meeting. It was also pleaded that the circular was issued informing the respondent authority of the holding of the meeting specifically in the said present instance. There was no evidence to the contrary produced by the management at all. As a matter of fact there was no cross-examination on this aspect of the matter.

23. Shri R. K. Sen Gupta the only management witness relied on by the Enquiry Officer, admits when questioned by the petitioner M. L. Jain that prior to the holding of meeting General Manager had directed him on 3rd February to watch the meeting to be held by workers and give a report. Thus it is proved beyond doubt that the management knew of the holding of meeting before hand and yet it gave no instructions or directions not to hold a meeting. The version of the petitioner that the practice was to hold the meeting by circulation the information and the management never objected to it stands proved by the manner management has acted in this behalf. Reference to the publication of the meeting on 4th February in the newspaper is not the source of information. If knowing before hand of holding the meeting no objection was made, it is futile now to contend by the management that the meeting was held without permission of the Chairman. On that finding the question of violation of Rule 5(21) of the Conduct Rules cannot arise because it cannot be said that holding of the meeting was without the permission of the Chairman. The usage was that circular was issued for holding meeting and unless it was objected to the permission must be implied to have been given. It cannot be said that the meeting was held without permission.

24. There is another difference from Niranjan Singh''s case (supra). The vast complex of Pragati Maidan is spread over acres of area. It is nobody''s case that the meeting of demonstration was held in the office premises. As a matter of fact Ex. P. 13 the hold prepared by the main management witness on whom reliance has been placed by the Enquiry Officer itself shows that the meeting was held on the lawns of the Nehru Pavilion facing R.I.C. and the meeting was peaceful and well behaved. It is also mentioned in the note that the meeting was held between 13.30 hours to 14.00 hours. The meeting was attended by 99% of the employees. The points mentioned by the speakers are said to have related to the recruitment rules and seniority rules and the existing policy of recruitment of daily wagers. Extravagant expenditure on meaningless cultural programmes,

conveyance and facilities for the guides. The meeting was so peaceful and well mannered that it dispersed immediately at 14.00 hours on reaching near the staircase No. 1 of the Block. It is thus clear that the Pragati Maidan is not a private property because public at large is permitted to come and visit this place. The demonstration was held in open area. It is not the case like Nirinan Singh (supra) where the demonstration was held in the private property of the railways where the public had no access. Pragati Maidan is a public area and the only condition is that the public has to buy tickets for entrance. The public thus has a right to assemble and meet on this place, the only limitation being one has to buy ticket.

25. Pragati Maidan complex Therefore where the meeting and demonstration were held could not be said to be the exclusive property like in Niranjan Singh''s case (supra) and these observations could not Therefore apply, in the present case.

26. Though we have held that the chairman must be implied to have given his permission to hold the meeting, but even if the permission was not given by the Chairman it would make no difference. The reason is that if Rule 5(21) was to be held broadly to mean that it prohibits the holding of peaceful meeting and demonstration simply because the permission of the chairman has not been obtained, the same will have to be declared ultra-vires in terms of the ratio of Kameshwar''s case. Rule 5(21) can only be up-held by reading it to mean that only meeting or demonstration which lead to the breach of tranquillity are prohibited. It is nobody''s case that there was breach of tranquillity or public order by holding the meeting. The Authority by framing a rule like Rule 5(21) cannot in any way fetter the undoubted right of holding peaceful meeting and demonstration conferred on the petitioners. Thus from whatever angle and matter is looked into no case is made out for violation of Clause 5(21) of the Conduct Rules.

27. On the failure to prove charge under Rule 5(21) of the Conduct Rules charge under rule 5(6) would automatically fall because if as found there was no lawful order prohibiting the holding of meeting, no question of willful or otherwise insubordination or disobedience of any such order arise.

28. With regard to charge under Rule 5(20) there can obviously be no act of subversive discipline or good behavior if as held already no fault can be found be holding meeting or demonstration. However, it was argued by Punjwani that raising of slogans of Muradabad are acts subversive of discipline. Now reference to Article of charge would show that general bald allegation has been made of having raised defamatory slogans and having made inflammatory speech. There was no specification at all of what defamatory slogans were raised. No document in support of this has been produced no record. The only evidence allegedly to come on the record about the defamatory slogans and inflammatory speech can Therefore be spelt out from the evidence which R. K. Sen Gupta the only management witness on which the enquiry officer and the disciplinary authority

have relied. He has though produced a document mentioning raising of slogans containing Muradabad, but in evidence he admits that he was ordered by the Managing Director/Chairman to prepare this document for the purpose of producing it before Mr Nair; the Enquiry Officer. Thus this document was specifically prepared. It is contemporaneous document. Now Mr. Gupta when he appeared as witness for evidence was specifically asked what abuses had been given; his answer was :

''Jo humse tukrayega choor choor ho jayega, Mohammed Yunus hai hai General Manager hai hai Tanashahi nahi chalegi Goonda garde nahi chalegi''

This will show that the document which were produced by Sen Gupta showing that the slogans raised included slogans of Muradabad were not stated by him in his evidence when he appeared as a witness. We are saying this to emphasize that the documents like P-13 was specifically prepared under the instructions of the management as admitted by Sen Gupta. But this alleged slogans is not mentioned to have been raised when the witness gave evidence. Even P-13 documents mentioned about the points raised at the meeting which dealt with the normal grievances like seniority, recruitment and other discriminatory practice of the management and insistence for their demands to be accepted. Gathering was completely peaceful and dispersed peacefully as is the evidence of all the witness of the management. In this context there can be no basis or material to hold that the conduct or the demonstration was an act subversive of discipline and good behavior within Rule 5(20). The Enquiry Officer in his report has found that the witnesses produced by the petitioner have all stated that he did not make any inflammatory speech and also did not speak any defamatory slogans. The Enquiry Officer also found that as regards defamatory slogans and speeches it is very difficult to establish these charges fully on account of the very nature of the charges against the petitioner, no employee of authority is likely to give evidence against them. Though we do not in any way countenance the shouting of defamatory or inciting slogans but we cannot on the material on record hold that any such slogans especially of Muradabad were raised. The record is bereft of any evidence to show that the purpose of demonstration was subversive. The meeting was attended by 99% of the staff members which dispersed peacefully immediately when the lunch hour was over. It is possible that during the course of speech or demonstration some kind of slogans which may not be very proper may have been raised. But then this country recognize the holding of demonstration and though one may not be very happy that sometimes demonstrations may use a language which is not very polite one cannot also ignore that in the heat of movement and when mass of people are raising slogans in support of their demands and more so when they feel that for over two years the demands have not been fulfilled it is possible that some kind of harsh words and slogans may have been raised. But all this is a far cry from the charge which had necessarily to be proved before the petitioner can be held guilty these slogans and that their action was subversive of discipline. One or two slogans even if touching on the border of permissive parameters cannot be torn out of their context and considered in isolation. In order to appreciate the impact of any slogan the total overall picture must be kept in view and when we look at the picture it is peaceful meeting of the employees held in dignified manner raising their demands no doubt also shouting slogans, but mostly in support of their union and demands. The facts even as found by the Enquiry Officer do not in any manner prove the charges against the petitioner. It is no longer in dispute that under Art 226 of the Constitution the High Court has jurisdiction to enquire whether the conclusion on the Government in the said proceedings, which is the basis of his dismissal is based on no evidence, a writ of certiorari can issue (See Union of India v. H. C. Goel 1964 1 L.L.J. 38).

29. As we have held that holding of meeting and demonstration is a fundamental right of the petitioner and that the permission must be implied to have been given there was no case to hold him guilty under Rule 5(21). There was no order of which any willful insubordination can be said to have taken place and Therefore Rule 5(6) was not attracted. We have already held that the slogans raised are not such as to cross the permissible parameters and Therefore any violation of Rule 5(20) does not arise. The result is that we find that the charges on which the petitioner has been proceeded against namely under Rules 5(6), (20) & (21) have not been proved against the petitioner. On that account the impugned action taken against the petitioner is hereby quashed and as a result the order of removal passed against the petitioner is also hereby quashed and set aside.

30. Mr Punjwani''s suggestion that if we hold that the enquiry was not properly held or proper opportunity denied we should remit the matter back giving further opportunity on the analogy of the court remitting the matter to Industrial Tribunal as was done in the case of M/s. Firestone Tyre & Rubber Co. of India (P) Ltd., v. The Workmen Employed 1981 2 L.L.J. 218 does not appeal to us. As we are also holding that the decision of the management that charges have been proved is based on no evidence, the suggestion of Mr. Punjwani really amounts to permitting the management to fill up the lacuna and have a fresh chance to prove his case. It is only where the management is able to prove his case on record, but no opportunity had been given to the employee to lead the defense to rebut the charges and that fairness to the employee demands a fresh enquiry. But not in the present case where even without a full opportunity having been given to the employee, the management has failed on the basis of its own material to prove the charge. Here is a case where on record there is nothing for the employee to answer or rebut. Why should he then be penalised to the tortuous process of a futile second enquiry. This contention is Therefore repelled.

31. The next contention of Mr. Punjwani is that even if the removal is held to be illegal, as we do, no order of reinstatement should be made, is plainly untenable, because it is well settled that in the matter of public employment if the termination is held to be bad, in view of the latest decisions in Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee,

cases a declaration can be granted that the man continues to be in service. Similarly, ordinarily, it is well settled that if termination of service is held to be bad, no other punishment in the guise of denial of back wages can be imposed and Therefore, it must as a necessary corollary follow that he will be entitled to all the back wages on the footing that he has continued to be in service uninterruptedly. (See A. L. Kalra''s case (supra).)

32. The law is now well settled that ordinarily a workman whose services have been illegally terminated either by dismissal, discharge or retrenchment will be entitled to reinstatement with full back wages except to the extent that he was gainfully employed during the enforced idleness. That is the normal rule. (See Hindustan Tin Works v. Its Employees 1978 2 L.L.J. 474.)

33. Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workman. It is as if the order has never been and so it must ordinarily lead to back wages, too. (See Surendra Kumar Verma v. The Central Government Industrial Tribunal cum Labour Court. New Delhi and another 1981 1 L.L.J. 386 and also see Mohan Lal v. The Management of M/s. Bharat Electronics Ltd. 1981 2 L.L.J. 70.

34. In the writ petition prayer has been made that respondents 3 & 8 be directed to restore the petitioner to his service with the payment of entire arrears. Of course the stand of the respondent is that the removal is valid. But no averment is made that even if the petitioner could claim reinstatement, he was not entitled to backwages. Now the principle is that when an employee after protracted litigation with the employee succeeds in showing that the termination of his services was unjustified he would normally be entitled to reinstatement with full back wages excepting of course if it could be shown that he had been gainfully employed in the meanwhile. Thus full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure, Management of Delhi Transport Corporation v. Sh. Ram Kumar and another 1982 (1) S.L.J. 255).

35. ''Thus if the employer wishes to show that workman was gainfully employed he must establish and prove the fact as no presumption of being gainfully employed can be raised. (See Ram Kumar''s case (supra).)

36. Thus it is beyond dispute that in view of our finding that the petitioner''s services were illegally terminated, he has a right to be reinstated with full back wages subject of course to any deduction if he has been gainfully employed during the period he has been out of service.

37. In this case the petitioner has filed an affidavit dated 27th September, 1984 that during this period he was not working any where nor had he been gainfully employed. All that is stated in the counter affidavit dated 19th October, 1984 is that the petitioner is having 30 bighas of agricultural land and a house and the petitioner gets income of Rs. 2000/- per year and it is only natural that be should

have been earning his livelihood by doing day to day labour. The petitioner has filed a rejoinder where he has again reiterated that he has not worked during this period and has also stated that he is a member of Hindu undivided family which owns the agricultural land and cannot be taken into account for the purpose of any deduction. The petitioner was kept out of employment. The respondent on whom the onus lay to show that he was gainfully employed during this period has filed to do so. There is thus no question of any deduction, the petitioner Therefore would be entitled to reinstatement with full back wages and other consequential benefits for the period he has remained out of service. We may mention that the respondent had filed an application seeking to cross-examine the petitioner. We see no justification for this. A statement having been made by the petitioner that he was not employed elsewhere and the respondent not having been able to point any specific material to show to contrary, no question of cross-examination arises.

Our conclusion Therefore is as follows :

1. The charges on which the petitioner has been proceeded against namely under Rules 5(6), (20) & (21) have not been proved against the petitioner.

2. The Trade Fair Authority of India is a State within the meaning of Art. 12 of the Constitution and is Therefore amenable to the jurisdiction of this court under Art. 226 of the Constitution.

3. The employees of the Trade Fair Authority of India are in public employment. This necessarily implies that before any adverse action in the nature of dismissal etc., is taken against such an employee, principles of natural justice which require fair hearing including the right to cross examine the witnesses produced by the management must be complied with.

4. It would as a rule follow that such employee whose services have been illegally terminated either by dismissal, discharge or retrenchment will be entitled to reinstatement with full back wages except to the extent that he was gainfully employed during the enforced idleness.

5. However if the employer wishes to show that workman was gainfully employed he must establish and prove that fact, no presumption of being gainfully employed can be raised.

38. The result is that this petition is allowed with costs. The impugned order of termination of service of the petitioner is quashed and set aside. The petitioner is directed to be reinstated with full back wages and allowances with other consequential benefits. Counsel''s fee Rs. 500/-.

39. We may mention that during the course of hearing the respondent authority had moved a number of application. The purpose of these applications was to seek permission to cross-examine the petitioner for the purposes of showing that he had worked during the period the petitioner was out of employment. We have already given reasons that we see no justification for allowing cross-examination

of any of the petitioners because no material has been provided. The other applications seeking permission to raise additional grounds why reinstatement should not be ordered and why the court should not exercise it powers; are all matters on merits which have been dealt with in the judgment. We Therefore see no necessity of passing any separate order on each of the applications. All these applications will be deemed to have been disposed of in terms of our reasons given in the judgment.

40. The petition as mentioned above is allowed with costs.

